IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20672 of 2002

Date of Decision: 26.05.2010

Debo Devi wife of Jeet Singh

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. O.P.S.Tanwar, Advocate,
for the petitioner.

Mr. D.S.Nalwa, Addl. A.G. Haryana.

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AUGUSTINE GEORGE MASIH, J.

Challenge in the present writ petition is to the Award dated 12.01.2001 (Annexure P-9) passed by the Labour Court, Ambala, vide which the reference has been answered against the petitioner-worklady holding her not entitled to any benefit under the Industrial Disputes Act.

Counsel for the petitioner contends that the petitioner was appointed in the month of February, 1990 on daily wage basis as Mali.

She performed her duties to the satisfaction of the respondents-Management. Without any notice or payment of retrenchment compensation in lieu thereof, the services of the petitioner were abruptly terminated on 5.11.1995. She had completed more than 240 days in 12 preceding months from the date of her termination and, therefore, was entitled to reinstatement in service with continuity thereof and full back wages. He contends that the records pertaining to the service rendered by the petitioner were in the custody of the respondents-Management and they had failed to produce the complete records which led to the returning of finding by the Labour Court that the petitioner had completed only 223 days in 12 preceding months from the date of her termination. He, on this basis, contends that the impugned Award passed by the Labour Court deserves to be set aside.

On the other hand counsel for the respondents has submitted that the onus to prove that the worklady had completed more than 240 days in 12 preceding months from the date of her termination, was on the petitioner which she has failed to discharge. The Management had produced the attested copies of the Muster Rolls before the Labour Court and on going through the said records the Labour Court had returned its finding. In case the petitioner was not satisfied with the records which were produced by the Management she should have summoned the same which she failed to do and, therefore, the finding as recorded by the Labour Court, is in accordance with law and does not call for any interference by this Court.

Earlier counsel for the petitioner had requested for summoning of the records on the ground that it has been specifically pleaded by the petitioner in her writ petition that despite request made by

the petitioner before the Labour Court for production of Muster Rolls, no decision was taken on the said application .

The records of the Labour Court were summoned. On perusal of the records, counsel for the petitioner has not pressed this assertion as the said application is not available on the records of the Labour Court.

I have heard the counsel for the parties and have gone through the records of the case.

The onus to prove that the workldady had completed more than 240 days in 12 preceding months from the date of alleged termination, is on the worklady hereself, which onus was to be discharged by her either by way of producing the evidence herself or by proving the said fact by summoning the records which were available with the respondents-Management. No such step was taken in the present case . The records , which were produced by the respondents-Management, are the attested copies of the Muster Rolls, which were exhibited as Ex.M-1 to Ex.M-11, according to which the petitioner–worklady had performed her duties during the season, as the work with the respondents-Management was of seasonal nature being the Department of Forests. On perusal of the Muster Rolls, the Court had come to the conclusion that the petitioner–worklady had performed her duties for 223 days in 12 preceding months from the date of her termination. The finding, thus, recorded by the Labour Court is based on the evidence produced before it which further is documentary in nature and thus, cannot be said to be not in accordance with law.

A perusal of the Award further shows that it was alleged by the petitioner that Section 25-G of Industrial Disputes Act stood violated but no evidence in support of this contention was led by the petitioner

before the Labour Court and, therefore, the Labour Court has rejected this plea also.

In view of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

May 26, 2010
pj